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Submission by the Turkey Human Rights Litigation Support Project, Association for Freedom of Expression (İfade Özgürlüğü Derneği), Association of Lawyers for Liberty/Istanbul Branch (Özgürlük İçin Hukukçular Derneği İstanbul Şubesi), Batman Bar Association (Batman Barosu), Bingöl Bar Association (Bingöl Barosu), Civic Space Studies Association (Sivil Alan Araştırmaları Derneği), Civil Rights Defenders, Dersim Bar Association (Dersim Barosu), European Lawyers for Democracy and Human Rights, Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı), Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı), Initiative for Freedom of Expression (Düşünce Suçuna Karşı Girişim), International Federation For Human Rights, Lambdaistanbul LGBT Solidarity Association (Lambdaistanbul LGBTİ+ Dayanışma Derneği), Kaos GL Association (Kaos GL Derneği), Life Memory and Freedom Association (Yaşam Bellek Özgürlük Derneği), London Legal Group, Mardin Bar Association (Mardin Barosu), Muş Bar Association (Muş Barosu), Progressive Lawyers Association (Çağdaş Hukukçular Derneği), P24 Independent Journalism Association (P24 Bağımsız Gazetecilik Derneği), Research Institute on Turkey, Roman Memory Studies Association (Roman Hafıza Çalışmaları Derneği/Romani Godi), Social Policies, Gender Identity, and Sexual Orientation Studies Association (Sosyal Politika, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği), Şırnak Bar Association (Şırnak Barosu), Truth Justice and Memory Center (Hakikat Adalet Hafıza Merkezi), University Queer Research and LGBTI+ Solidarity Association (Üniversiteli Kuir Araştırmaları ve LGBTİ+ Dayanışma Derneği), Van Bar Association (Van Barosu) and Human Rights Joint Platform (İnsan Hakları Ortak Platformu): Association for Monitoring Equal Rights (Eşit Haklar İçin İzleme Derneği), Citizens Association (Yurttaşlık Derneği), Human Rights Agenda Association (İnsan Hakları Gündemi Derneği), Human Rights Association (İnsan Hakları Derneği), and Rights Initiative Association (Hak İnisiyatifi Derneği) pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments Providing Observations on the Implementation of *Oya Ataman group (Oya Ataman v. Turkey (74552/01) and 73 Repetitive Cases)*

I. Summary

ECtHR's findings in the cases of the *Oya Ataman group* showed how the right to freedom of peaceful assembly had been curtailed by restrictive laws and practices in Türkiye. Most notably, firstly, the Court established that the Turkish authorities had failed to show a certain degree of tolerance towards peaceful gatherings, as required under Article 11 of the Convention. Secondly, the Court noted the increase before it in the number of similar applications concerning the right to freedom of assembly and/or use of force by law enforcement officials during demonstrations, and Türkiye's duty to adopt general measures to prevent further similar violations in future. Thirdly, the ECtHR also drew attention to the chilling effect on the right to peaceful assembly of persistently using excessive force. Lastly, it underlined the need to reinforce the guarantees on the proper use of tear gas, as well as the need for an *ex post facto* review to assess the reasonableness and proportionality of using excessive force against the protestors.

In the aftermath of the judgments of the *Oya Ataman group*, despite the Court's findings and the Committee of Ministers' decisions on the issue, the Turkish Government has failed to amend the non-

compliant legal framework in the light of the Court's case law and to align its judicial and administrative practice with the Convention standards. Moreover, the Turkish Government has even widened and intensified its efforts to erode the right to freedom of peaceful assembly of the political opposition and other critical voices. In practice, especially since the attempted *coup d'Etat* of July 2016 (under the Emergency Rule and after), restrictions upon the right to peaceful assembly have become commonplace in Türkiye. In addition to the inconsistencies of Law No. 2911 with the Court's case law, which have still not been addressed, additional serious restrictions have been placed on the right to freedom of peaceful assembly under the state of emergency, after the attempted *coup d'état* of 15 July 2016. Although the state of emergency formally ended on 18 July 2018, the serious restrictions placed under the emergency regime – which were not in line with the principles set out in the case law of the ECtHR- were incorporated into permanent legislation.

The information and statistics gathered by several NGOs show that, as a result of the application and interpretation by the domestic authorities of the domestic laws, there continue to be severe violations of the right to peaceful assembly in Türkiye for three main reasons: i) blanket and specific bans on demonstrations and events; ii) police interventions with excessive use of force; and iii) criminalisation of peaceful protestors. Moreover, the application of these laws and the authorities' practices have disproportionately affected certain regions and particular groups in Türkiye, notably the Kurdish southeast, women's rights organisations, LGBTI+ groups and workers.

The NGOs conclude that the situation regarding the exercise of the right to freedom of peaceful assembly has seriously deteriorated in Türkiye, during the supervision process of *Oya Ataman* group. Considering the essential role of the right to freedom of assembly in safeguarding democracy and pluralism and Türkiye's upcoming presidential elections in 2023, the NGOs underlined the urgent need for the CM to adopt a strong and resolute approach in its supervision of the execution of the judgments of the ECtHR in the *Oya Ataman* group. In this regard, the NGOs urge the CM to:

- iii. Urge Türkiye to revise its Action Plan and address in full the structural problems arising from the domestic legislative framework identified by the ECHR in the *Oya Ataman* group;
- iv. Amend Law No. 2911 to ensure that its provisions are fully in line with the principles set out in the case law of the ECtHR;
- v. Amend Law No. 5442 to ensure that its provisions are fully in line with the principles set out in the case law of the ECtHR; in particular, amend Article 11(C) which grants broad powers to governors to ban both peaceful public assemblies and indoor human rights events,
- vi. Review the 2016 Directive on the use of tear gas and other crowd control weapons to ensure that it complies in all respects with international standards in relation to the use of crowd control weapons and to make use of the international expertise which could be made available through the Council of Europe;
- vii. Urge Türkiye to put in place an effective ex post facto review mechanism to assess the reasonableness and proportionality of any use of excessive force by law enforcement officials;
- viii. Call on Türkiye to stop the criminalization of the members of civil society who exercise their right to freedom of peaceful assembly;
- ix. Call on Türkiye to pursue a clear and detailed strategy to prevent violations of the right to freedom of peaceful assembly;
- x. Urge Türkiye to carry out an effective overview the in-service training programmes for law enforcement officials on human rights, proportionate use of force, intervention against public events and use of tear gas;

xi. Request Türkiye to provide detailed information on administrative bans imposed on assemblies and demonstrations (including information on the locations, the authorities who ordered, dates, their scope and durations), on interventions by law enforcement officers to disperse demonstrations and meetings, and on assemblies and demonstrations that were allowed to take place without police intervention although they failed to comply with the requirements of the Law No. 2911, as well as the number of criminal and administrative prosecutions and convictions linked to breaches of Law No. 2911;

xii. Request Türkiye to provide detailed information on the criminal investigations and proceedings initiated against law enforcement officers accused of using excessive force to disperse meetings and demonstrations (including information on the numbers of prosecutions, convictions and acquittals, the type of offences and sentences).

II. Introduction

1. In line with Rule 9.2 of the Rules of the Committee of Ministers (“the CM” or “Committee”) for the supervision of the execution of judgments and of the terms of friendly settlements, the Turkey Human Rights Litigation Support Project, Association for Freedom of Expression (İfade Özgürlüğü Derneği), Association of Lawyers for Liberty/Istanbul Branch (Özgürlük İçin Hukukçular Derneği İstanbul Şubesi), Batman Bar Association (Batman Barosu), Bingöl Bar Association (Bingöl Barosu), Civic Space Studies Association (Sivil Alan Araştırmaları Derneği), Civil Rights Defenders, Dersim Bar Association (Dersim Barosu), European Lawyers for Democracy and Human Rights, Foundation for Society and Legal Studies (Toplum ve Hukuk Araştırmaları Vakfı), Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı), Initiative for Freedom of Expression (Düşünce Suçuna Karşı Girişim), International Federation For Human Rights, Lambdaistanbul LGBT Solidarity Association (Lambdaistanbul LGBTİ+ Dayanışma Derneği), Kaos GL Association (Kaos GL Derneği), Life Memory and Freedom Association (Yaşam Bellek Özgürlük Derneği), London Legal Group, Mardin Bar Association (Mardin Barosu), Muş Bar Association (Muş Barosu), Progressive Lawyers Association (Çağdaş Hukukçular Derneği), P24 Independent Journalism Association (P24 Bağımsız Gazetecilik Derneği), Research Institute on Turkey, Roman Memory Studies Association (Roman Hafıza Çalışmaları Derneği/Romani Godi), Social Policies, Gender Identity, and Sexual Orientation Studies Association (Sosyal Politika, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği), Şırnak Bar Association (Şırnak Barosu), Truth Justice and Memory Center (Hakikat Adalet Hafıza Merkezi), University Queer Research and LGBTİ+ Solidarity Association (Üniversiteli Kuir Araştırmaları ve LGBTİ+ Dayanışma Derneği), Van Bar Association (Van Barosu) and Human Rights Joint Platform (İnsan Hakları Ortak Platformu): Association for Monitoring Equal Rights (Eşit Haklar İçin İzleme Derneği) , Citizens Association (Yurttaşlık Derneği), Human Rights Agenda Association (İnsan Hakları Gündemi Derneği), Human Rights Association (İnsan Hakları Derneği), and Rights Initiative Association (Hak İnisiyatifi Derneği) (“NGOs”) hereby present this communication regarding the execution of the European Court of Human Rights (“the Court” or “ECtHR”) judgment in the cases of *Oya Ataman group v. Turkey* (App. No. 74552/01) and 73 Repetitive Cases.
2. In Part III, this submission first underlines the ECtHR’s important findings in the cases of the *Oya Ataman group* which confirm how the right to freedom of peaceful assembly has been curtailed by restrictive laws and practices in Türkiye. In Part IV, the submission focuses on how, in the aftermath of the judgments of the *Oya Ataman group*, the Turkish Government has failed to amend the non-compliant domestic legal framework in the light of the Court’s case law or to align its judicial and administrative practice with the Convention standards. Moreover, the submission examines additional developments concerning the restrictions on the right to freedom of assembly in Türkiye, suggesting that the Government has further widened and intensified its

efforts to erode this fundamental human right. Part V of the submission sets out recommendations to the Committee of Ministers, particularly regarding the general measures Türkiye should take to implement the judgments in the *Oya Ataman group*.

III. *Oya Ataman group* description

3. The *Oya Ataman group* concerns violations of the right to freedom of peaceful assembly, including the prosecution of participants in demonstrations and the use of excessive force to disperse peaceful demonstrations.¹ The cases also concern unjustified detention orders imposed on the participants, the failure to carry out effective investigations into the applicants' allegations of ill-treatment and the lack of an effective remedy in this respect (violations of Articles 2, 3, 5, 10, 11 and 13 of the Convention).
4. The events in question took place in most regions of Türkiye and involved protests related to a range of social and political issues, including changes to prison conditions, higher education and social security, a NATO summit and the 2003 invasion of Iraq.² While the total number of cases included in the group was 74, the CM decided to close 64 cases "without prejudice to the continuing need for general measures" on the ground that no further individual measures were possible or required.³ Nevertheless, the fact that these cases had been pending at the CM for more than fifteen years, confirms that there are very serious shortcomings in the domestic legislative framework, as well as in the judicial and administrative practice of the Turkish authorities. Those shortcomings require the adoption of a number of general measures so that the applicable ECtHR case law on the right to freedom of assembly can be fully implemented in Türkiye.

A. Critical findings of the ECtHR in the *Oya Ataman group* cases

5. First of all, it should be underlined that in *Oya Ataman v. Turkey*, the Court explicitly stated that "where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance."⁴
6. Secondly, in four judgments of the *Oya Ataman group*,⁵ the Court included indications under Article 46 and noted, in particular, the following:
 - **the increase before it in the number of similar applications** concerning the right to freedom of assembly and/or use of force by law enforcement officials during demonstrations, and Türkiye's duty to adopt general measures to prevent further similar violations in future;⁶
 - **the chilling effect on the right to peaceful assembly of persistently using excessive force** (a systemic problem), including potentially lethal tear gas canisters, to disperse peaceful demonstrations;⁷

¹ See for more detailed information: <https://hudoc.exec.coe.int/eng?i=004-37415>.

² Ibid.

³ The issues related to the general measures to ensure effective investigations into allegations concerning the unlawful use of force by law enforcement officers are examined under the *Batı group* of cases, although questions relating to the reopening of investigations in the individual cases continue to be examined as individual measures within the *Ataman group*. The issues related to the general measures with respect to failure to provide concrete and sufficient reasoning and to consider alternative measures for the applicants' pre-trial detention (violation of Article 5, paragraph 1 of the Convention) are being examined under the *Nedim Şener group* of cases (38270/11).

⁴ *Oya Ataman v. Turkey*, No. 74552/01, 5 December 2006, para. 42.

⁵ *Abdullah Yaşa and Others v. Turkey*, No. 44827/08, 16 July 2013; *İzci v. Turkey*, No. 42606/05, 23 July 2013; *Ataykaya v. Turkey*, No. 50275/08, 22 July 2014; and *Süleyman Çelebi and Others v. Turkey*, No. 37273/10, 24 August 2016

⁶ *İzci v. Turkey*, para. 95.

⁷ Ibid para. 98; *Ataykaya v. Turkey*, para. 72.

- **the need to reinforce the guarantees on the proper use of tear gas** to minimise the risk of death and injury by adopting more detailed and clearer regulations and setting up systems to ensure that officers using tear gas are properly trained and supervised;⁸ and
 - **the need for an *ex post facto* review to assess the reasonableness and proportionality of using excessive force**, and in particular, any intervention made by using tear gas.⁹
7. In addition to the above, in *Kemal Çetin v. Turkey* and *Şenşafak v. Turkey*, the Court determined **that criminal prosecution and convictions of non-violent participants in demonstrations linked to breaches of Law No. 2911 on Demonstrations and Public Meetings (“Law No. 2911”) had a chilling effect** on the right to freedom of peaceful assembly and could not be considered “necessary in a democratic society” within the meaning of Article 11(2) of the Convention.¹⁰
8. Lastly, in *Akarsubaşı v. Turkey*, the Court found that **the imposition of administrative fines on participants of peaceful demonstrations linked to breaches of Misdemeanours Law No. 5326 was also “not necessary in a democratic society” within the meaning of Article 11(2) of the Convention.**¹¹

B. Findings of the Committee of Ministers in the Course of Its Implementation Supervision Process and the Turkish Government’s responses

Individual measures

9. During its last examination at its 1411th meeting (14-16 September 2021), the Committee’s findings concerning individual measures included the following:
- *noted with regret that, after carrying out ex officio evaluations as to the reopening of investigations against law enforcement officers in this group of cases, the prosecuting authorities have determined that such investigations are now time-barred in six cases and that new or reopened investigations are also impossible in three other cases due to prescription;*
 - *considering the obligation of the Respondent States for an ex officio review of the possibility of reopening of investigations in cases where the European Court finds a violation of the procedural aspect of Articles 2 and/or 3 and the need to prompt reaction in this respect to avoid impunity, urged the authorities to consider introducing an ex officio practice of re-examining such investigations at an earlier stage of the Convention proceedings, either when applications are communicated by the Court, or at the latest immediately after the delivery by the Court of a judgment finding a violation.*

General measures

10. On the issue of general measures, the CM noted serious problematic issues concerning this group of cases, while underlining that these issues had been pending before the Committee for more than fourteen years. Most notably, the CM indicated, among others, the need for legislative reforms in the area of freedom of assembly.

⁸ *Abdullah Yaşa and Others v. Turkey*, para. 61; *Ataykaya v. Turkey*, para. 73.

⁹ *Ataykaya v. Turkey*, para. 72; *Süleyman Çelebi and Others v. Turkey*, para. 132.

¹⁰ *Kemal Çetin v. Turkey*, No. 3704/13, 26 May 2020, paras 35-56; *Şenşafak v. Turkey*, No. 5999/13, 7 July 2020, paras. 39-48.

¹¹ *Akarsubaşı v. Turkey*, No. 70396/11, 21 July 2015, paras 42-47.

- 11.** First of all, while the CM noted that the Constitutional Court’s approach towards the interpretation and application of Law No. 2911 was in line with the case-law of the ECtHR, it underlined that the provisions of Law No. 2911 remained inconsistent with the right to peaceful assembly guaranteed under Article 11 of the Convention as they allowed local authorities to place unwarranted restrictions on this right. Most notably, in some cases, the authorities imposed blanket bans on all demonstrations and events. And those who attempted to exercise it in breach of these restrictions were at risk of enforced dispersal and criminal and administrative sanctions.¹² While noting the “preoccupying” situation on the ground, the CM stated with concern that no legislative amendment had been made despite its repeated clear requests in this regard. It then strongly urged the authorities to amend Law No. 2911, to ensure that the legislative framework governing the right to freedom of peaceful assembly is fully in line with the principles set out in the case law of the ECtHR and the Constitutional Court.¹³
- 12.** Secondly, regarding the Directive on Tear Gas, Gas and Defence Rifles and Use and Storage of Equipment and Ammunitions and Training of the User Personnel (“the Directive”),¹⁴ the CM noted that it was still not clear that the implementation of the principles of the Directive was entirely in line with international standards.¹⁵ In particular, even though the authorities suggested that the Directive ensures that persons who are exposed to the gas have immediate access to medical attention, it did not seem to contain a specific provision in this sense; a lacuna that had been highlighted by the ECtHR and the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (“the CPT”).¹⁶ Moreover, as the Directive allowed the use of tear gas in case of “physical attacks against the security forces”, it was not clear whether the use of the gas is limited only to situations of serious risk to the physical integrity of law enforcement officers, as required by the ECtHR’s case law.¹⁷ As a result, the CM again invited the authorities to review the 2016 Directive to ensure that it complies in all respects with international standards in relation to the use of crowd control weapons and to make use of the international expertise which could be made available through the Council of Europe.¹⁸
- 13.** Thirdly, the CM requested the authorities to continue to provide detailed information in time for the Committee’s next examination of this group in March 2023, explaining, for the past five years, the context of interventions by law enforcement officers to disperse demonstrations and meetings in which tear gas and other crowd control weapons were used and those that were allowed to take place without police intervention although they failed to comply with the requirements of the Law No. 2911, as well as the number of criminal and administrative prosecutions and convictions linked to breaches of Law No. 2911.¹⁹

The Turkish Government’s Arguments before the CM

- 14.** In its latest action plan of 8 July 2022, the Turkish Government submitted that Law No. 2911 was compliant with the Convention, that “the underlying reason for the violation at hand [was] the application of law rather than the substantive provisions”, and that the “requests calling for a

¹² The Committee of Ministers, Notes on the Agenda, 1411th meeting (DH) (14-16 September 2021) - H46-38 Oya Ataman group v. Turkey (Application No. 74552/01), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a3a81e.

¹³ The Committee of Ministers, Decisions, 1411th meeting (DH) (14-16 September 2021) - H46-38 Oya Ataman group v. Turkey (Application No. 74552/01, [https://hudoc.exec.coe.int/ENG?i=CM/Del/Dec\(2021\)1411/H46-38E](https://hudoc.exec.coe.int/ENG?i=CM/Del/Dec(2021)1411/H46-38E)).

¹⁴ Entered into force in 2016.

¹⁵ See the Committee of Ministers, Decisions (n. 13).

¹⁶ See the Committee of Ministers, Notes on the Agenda (n. 12).

¹⁷ Ibid. See *Petrus Iacob c. Roumanie*, No. 13524/05, para. 37.

¹⁸ See the Committee of Ministers, Decisions (n. 13).

¹⁹ Ibid.

legislative amendment [were] not in compliance with the principle of subsidiarity”.²⁰ The Government also argued that the previous amendments which had been adopted to Law No. 2911 between 2014 and 2018 had reinforced its Convention-compliant character. Moreover, it stated that the Court of Cassation’s and the Constitutional Court’s interpretation of the legislative framework was in line with the Convention.

15. We recall that the amendments made between 2014-2018 to Law No. 2911 have already been examined by the CM in its previous meetings, following which the CM was not convinced that they were Convention-compliant and still urged the authorities to amend Law No. 2911. Second, as the CM stated in its decision of 14-16 September 2021, the positive developments in the Constitutional Court’s case law are not sufficient, and the authorities should amend Law No. 2911 to ensure that its provisions are fully in line with the principles set out in the case law of the ECtHR and the Constitutional Court.
16. The ECtHR’s numerous findings in the *Oya Ataman group* cases have already identified the inconsistencies of Law No. 2911 with the Court’s case-law. Moreover, having regard to the Court’s most recent judgments and the European Commission’s 2020 report on Türkiye, the CM noted that the situation on the ground remained worrying.²¹

IV. Continuing crackdown on freedom of peaceful assembly in Türkiye

The current situation in Türkiye: Continuing crackdown on freedom of assembly

17. By the end of 2021, the total number of ECtHR judgments finding violations of Article 11 against Türkiye had reached 111.²² This is more than any other Council of Europe member State.²³ The majority of these judgments concern violations of the right to freedom of peaceful assembly. While the Court’s findings and the CM’s decisions on the issue already reveal the seriousness of the restrictions on the right to freedom of peaceful assembly in Türkiye, the most recent data concerning the Turkish authorities’ judicial and administrative practice show a continuing crackdown on this right.
18. In the aftermath of the ECtHR’s judgments in the *Oya Ataman group* of cases, the Turkish Government has not only failed to amend the non-compliant legal framework in the light of the Court’s case law and to align its judicial and administrative practice with the Convention standards, but it has also widened and intensified its efforts to erode the right to freedom of peaceful assembly of the political opposition and other critical voices. In practice, especially since the attempted *coup d’Etat* of July 2016 (under the Emergency Rule and after), restrictions upon the right to peaceful assembly have become commonplace in Türkiye.²⁴

²⁰ Communication from Türkiye concerning the group of cases *Ataman v. Turkey* (Application No. 74552/01), Action Plan (08/07/2022), [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)728E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)728E).

²¹ European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, Turkey 2020 Report, SWD(2020)355, 6 October 2020, p. 37.

²² https://www.echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf

²³ https://echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf.

²⁴ See FIDH’s Western Europe Desk; FIDH/OMCT’s Observatory for the Protection of Human Rights Defenders, ‘A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society’ (“FIDH report”) (July 2020), https://www.fidh.org/IMG/pdf/obs_turkeyweb.pdf; Human Rights Association (“İHD”), ‘Contribution to the report of Special Rapporteur on the rights to freedom of peaceful assembly and of association during crises situations’ (2 August 2022); Rule 9.2 Communication from a NGO (Human Rights Joint Platform [IHOP]) (25/01/2019), 1340th meeting (March 2019) (DH), <[https://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)125E](https://hudoc.exec.coe.int/eng?i=DH-DD(2019)125E)>; ICJ and IHOP, ‘Restricted at Discretion: The Enjoyment of the Freedoms of Movement and Assembly in Turkey During and After the State of Emergency’ (September 2019), <https://ihd.org.tr/en/wp-content/uploads/2019/11/Turkey-FoMA-brief-Advocacy-Analysis-brief-2019-ENG.pdf>.

19. This section will focus on the continuing violations arising from the domestic legislative framework, and will also explain the additional restrictions imposed on the right to freedom of assembly in the aftermath of the attempted *coup d'état* of July 2016, which have made this right non-existent in practice for those critical to the government.

A. Continuing violations of Article 11 arising from the domestic legislative framework

20. First of all, despite the Committee's decisions,²⁵ the Turkish authorities have not taken the necessary measures to bring Law No. 2911 into line with the principles set out in the case law of the ECtHR, because it remains incompatible with the right of peaceful assembly under Article 11 of the Convention. As the CM has also noted, Law No. 2911 allows local authorities to:

- impose unwarranted restrictions on the right of peaceful assembly;
- impose blanket bans on all demonstrations and events;
- enforce dispersal and impose criminal and administrative sanctions against those who attempt to exercise their right of peaceful assembly.²⁶

21. As they are vaguely formulated, several provisions of Law No. 2911 pose serious limitations on the right to freedom of assembly, combined with the authorities' restrictive interpretations and abusive practices.²⁷ Most notably, Article 10 of Law No. 2911 requires that the organisers of both indoor and outdoor assemblies notify the authorities of an assembly at least 48 hours beforehand, in addition to other procedural requirements. Moreover, Article 6 of Law No. 2911 allows governors and district governors to determine locations and routes where assemblies are allowed to take place. Furthermore, under Article 17 of Law No. 2911, governors and district governors are also entitled to "postpone a specific meeting for up to a maximum of one month for reasons of national security, public order, prevention of crime, protection of public health, public morality or the rights and freedoms of others". They may also "ban the meeting in case there is an evident and imminent threat of a crime being committed". In fact, the law provides the authorities with a complete discretion to evaluate any such risks.²⁸ Additionally, Article 19 of the same law, allows governors to postpone and ban all meetings in cities and districts for up to one month for reasons of national security, public order, prevention of crime, protection of public health, public morality or the rights and freedoms of others.

22. In addition, according to Article 23 of Law No. 2911, assemblies shall be deemed to be "unlawful" if their organisers fail to fulfil various procedural requirements, including the obligation to notify the authorities and to respect the restrictions on their location.²⁹ Furthermore, under Article 24, police are entitled to disperse "unlawful" assemblies, including those which start lawfully but become unlawful during the course of the assembly, by first giving a notice to disperse and then by using force.³⁰ As a result, police may crack down on assemblies that they characterise as "unlawful" or "unauthorised" on the basis of these provisions, regardless of whether the assembly is peaceful or not, and whether their actions meet the test of necessity and proportionality.³¹

²⁵ See the Committee of Ministers Decision (n. 13); The Committee of Ministers Decision, 1340 meeting (DH) March 2019 - H46-24 Freedom of assembly group (Oya Ataman group) v. Turkey (Application No. 74552/01), <[https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2019\)1340/H46-24E](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2019)1340/H46-24E)>.

²⁶ See the Committee of Ministers, Notes on the Agenda (n. 12).

²⁷ FIDH report (n. 24) pp. 12-13.

²⁸ See also *ibid.* 27.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

- 23.** It should be also noted that the duty to notify the authorities of assemblies is implemented as a *de facto* permission mechanism, which is in breach of Article 34 of the Turkish Constitution stating that “Everyone has the right to hold unarmed and peaceful meetings and demonstration marches *without prior permission*” [emphasis added]. While notification procedures for a public event do not normally constitute an interference with the essence of the right according to the ECtHR jurisprudence, the purpose of such procedures must be to ensure “the smooth conduct of any assembly, meeting or another gathering”,³² and these should not represent “a hidden obstacle to freedom of peaceful assembly”.³³ However, as the ECtHR and the CM has already found, the above-mentioned provisions are instead used by the authorities to restrict or totally ban the right to freedom of assembly.³⁴
- 24.** In addition to the above, after the attempted *coup d'état* of 15 July 2016, under the state of emergency, Article 11 of Law No. 2935 on the state of emergency³⁵ granted broad powers to governors, restricting the freedoms of assembly and movement along with other freedoms, which significantly affected civil society activities.³⁶ Article 11(m) of Law 2935 allowed the governors to ban, suspend, and restrict outdoor and indoor assemblies and subject them to prior permission. According to Article 11(b), the governors were also entitled to ban people from moving and assembling in certain areas and/or during certain times.³⁷ As a result, severe restrictions such as blanket bans on peaceful assemblies were frequently imposed.
- 25.** Although the state of emergency formally ended on 18 July 2018, the serious restrictions placed under the emergency regime – which were not in line with the principles set out in the case law of the ECtHR- were incorporated into permanent legislation. For example, on 25 July 2018, an ‘omnibus law’³⁸ was passed by the Parliament which introduced emergency-type restrictive measures into a number of ordinary laws.³⁹ The amendments included the following:
- An amendment to Article 6 of Law No. 2911 gave provincial governors the right to decide on the venue and the route of gatherings, provided that the venue or the route ‘do not make the daily life of citizens excessively and unbearably difficult.’ Most recently, the Constitutional Court found that this amendment was not in breach of the Constitution.⁴⁰
 - An amendment to Article 7 of Law No. 2911 allowed gatherings in open places until night-time and in open places until midnight (the latter with the governor's permission). Most recently, this amendment was found in breach of the Constitution by the Constitutional Court on the ground that this ban was “not necessary and proportionate in a democratic society”.⁴¹

³² ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 18, para. 90 (31 August 2022); *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008, para. 42.

³³ ECtHR, Guide on Article 11 of the Convention – Freedom of assembly and association, p. 18, para. 92 (31 August 2022); *Oya Ataman v. Turkey*, para. 38.

³⁴ See for detailed information *Section IV.B*. See also *FIDH report* (n.24).

³⁵ Law no. 2935 on State of Emergency published in the Official Gazette no. 18204, dated 27 October 1983, and entered into force on the date of its publication.

³⁶ FIDH report (n.24) p. 13.

³⁷ *Ibid.*

³⁸ Law No. 7145 on the Amendment of Certain Laws and Decree Laws (*Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun*) published in the Official Gazette no. 30495, dated 31 July 2018, and entered into force on the date of its publication.

³⁹ Rule 9.2 Communication from a NGO (Human Rights Joint Platform [IHOP]) (25/01/2019), 1340th meeting (March 2019) (DH), <[https://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)125E](https://hudoc.exec.coe.int/eng?i=DH-DD(2019)125E)> .

⁴⁰ Constitutional Court decision (E. No. 2018/137, K. 2022/86, 30 June 2022) published in the Official Gazette no. 32071, dated 12 January 2023.

⁴¹ Constitutional Court decision (E. No. 2018/137, K. 2022/86, 30 June 2022) published in the Official Gazette no. 32071, dated 12 January 2023.

- An amendment to Article 11 (C) of Law No. 5442 on Provincial Administration⁴² allows provincial governors to take preventive measures for maintaining peace, security, right to physical integrity, and public order in their provinces by banning the entry or exit of individuals to their provinces for fifteen days. Furthermore, these restrictions can be extended after the initial fifteen days on a continuous basis. The broad powers under this provision have allowed governors to ban many peaceful public assemblies and even indoor human rights events, thus adding to the other limitations provided by Law No. 2911.⁴³ Nevertheless, most recently, the Constitutional Court found that this amendment not in breach of the Constitution.⁴⁴

26. In addition to the above, the implementation of the Directive has not been in line with international standards. In particular, the use of tear gas has not been limited only to situations of serious risk to the physical integrity of law enforcement officers, as required by the Court's case law.⁴⁵

B. Detailed information and examples showing the severe restrictions on the right to freedom of peaceful assembly and abusive practices of the authorities

27. As a result of the application and interpretation by the domestic authorities of the domestic laws cited above, there continue to be severe violations of the right to peaceful assembly in Türkiye for three main reasons: i) blanket and specific bans on demonstrations and events; ii) police interventions with excessive use of force; and iii) criminalisation of peaceful protestors. Moreover, it should also be underlined that the application of these laws and the authorities' practices have disproportionately affected certain regions and particular groups in Türkiye⁴⁶, notably the Kurdish southeast, women's rights organisations, LGBTI+ groups and workers. We set out below a number of specific examples of such practices.

1. Imposition of blanket and specific bans on all demonstrations and events

28. The imposition of pre-emptive administrative bans on all demonstrations and events in different cities and districts has been a regular practice of the domestic authorities, not only during the state of emergency but also in its aftermath.⁴⁷ On numerous occasions, the authorities have sought to thwart proposed assemblies before they could take place, by imposing general and specific bans. Meetings and demonstrations have been prohibited on the basis of abstract, discretionary and arbitrary criteria,⁴⁸ mostly aiming at systematically banning assemblies

⁴² Law No. 5442 on Provincial Administration (*İl İdaresi Kanunu*) published in the Official Gazette no. 7236, dated 18 June 1949, and entered into force on 31 July 1949.

⁴³ See below section IV.B.1

⁴⁴ Constitutional Court decision (E. No. 2018/137, K. 2022/86, 30 June 2022) published in the Official Gazette no. 32071, dated 12 January 2023.

⁴⁵ Ibid. See *Petrus Iacob v. Romania*, No. 13524/05, 4 December 2012, para. 33.

⁴⁶ Human Rights Watch, 'Turkey Events of 2019', <https://www.hrw.org/world-report/2020/country-chapters/turkey#803bf5>.

⁴⁷ European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, (2021), Turkey Report 2021, pp. 36-37, https://neighbourhood-enlargement.ec.europa.eu/turkey-report-2021_en.

For detailed information on the bans on the right to freedom of assembly during the State of Emergency, see, ESHID, 'Freedom of Peaceful Assembly Monitoring Report: October 2015 – November 2016 Turkey', pp. 8-10,

<https://www.esithaklar.org/wp-content/uploads/2017/03/AMER-Freedom-of-Assembly-Annual-Report.pdf>; ESHID, 'Toplantı ve Gösteri Hakkı İzleme Raporu 2017', pp. 14-20, https://www.esithaklar.org/wp-content/uploads/2019/06/Toplantı_Gosteri_Hakkı_2017.pdf;

ESHID, 'Toplantı ve Gösteri Hakkı İzleme Raporu Ekim 2015 – Kasım 2016', pp. 36-52, <https://www.esithaklar.org/wp-content/uploads/2017/03/Toplantı%20ve%20Gösteri%20Hakkı%20İzleme%20Raporu%20Ekim%202015%20-%20Kasım%202016.pdf>;

⁴⁸ See, European Commission, Turkey Report 2021 (n. 47), p 37.

organised in certain locations or on particular issues.⁴⁹ The authorities have routinely sought to justify these restrictions on grounds of public order, ensuring peace and internal security, as well as citing additional ill-defined and abstract reasons. These grounds have often been generic, and almost a word-for-word copy of the grounds for restrictions provided in the law,⁵⁰ without specifying concrete reasoning which is specific to the context.⁵¹ As FIDH has argued, the Turkish authorities continue to fail “to demonstrate that the measures meet the legal requirements of necessity and proportionality, and, in practice, impair the very essence of the right”.⁵²

29. Furthermore, there is no effective remedy against the decisions banning assemblies,⁵³ as the administrative courts do not process legal challenges sufficiently quickly. As a result, it is extremely difficult in practice to obtain a stay of execution in time, in cases brought before the administrative courts. This is because decisions regarding the banning of a particular demonstration can be taken one day before the event, and general decisions to ban a gathering can be made immediately before it.⁵⁴
30. As a result of what amount to systematic bans in practice, demonstrations, protests, assemblies and press conferences are easily and often declared “unlawful” and face violent intervention by the security forces. In the meantime, permitted protests can only be made in public “restricted in certain areas which are announced in advance”.⁵⁵ In practice, these public spaces are chosen in a selective way to limit the visibility of protests which are perceived by the authorities to be in opposition to, or otherwise contrary to, the Government’s position.⁵⁶

General bans

31. In the context of general (blanket) bans, under Law No. 2911 and Law No. 5442, provincial governors have regularly imposed bans on demonstrations and events in many provinces.⁵⁷ It is recalled that Law No. 2911 allows governors to suspend assemblies for a maximum period of 30 days⁵⁸ and Law No. 5442 allows them to restrict assemblies for a period of 15 days.⁵⁹ While this is already extremely restrictive in practice, the duration and number of general bans imposed by provincial and district governates based on these laws indicate how the authorities have progressively abused their powers.⁶⁰ The figures below (from the Association for Monitoring Equal

⁴⁹ The authorities systematically banned demonstrations and assemblies in certain symbolic locations such as Taksim or Galatasaray Square in Istanbul, or central public places in the Southeast of Türkiye. On the other hand, the assemblies and demonstrations concerning certain issues such as LGBTI+ rights, women’s rights, were also systematically banned countrywide.

⁵⁰ FIDH report (n. 24) pp. 16-17.

⁵¹ Ibid.

⁵² Ibid. p. 13.

⁵³ See D. Çiğdem Sever, ‘Assessment of the Effectiveness of Administrative Justice in the Right to Assembly in Turkey: A Review of Annulment Action Against Bans and Action for Damages Against Ill-Treatment’ (ESHID, 2022), <https://www.esithaklar.org/wp-content/uploads/2022/08/Assessment-of-The-Effectiveness-of-Administrative-Justice-in-The-Right-to-Assembly-in-Turkey.pdf>.

⁵⁴ Ibid.: “In the limited cases where an annulment decision is made, the decision is always made after the assembly date, except for a single decision.”

⁵⁵ See Amnesty International, Beyhan T. ‘Hapsedilen Taksim: Protesto hakkının adım adım nasıl kısıtlandığına bir örnek’, (12 September 2022), <https://www.amnesty.org.tr/icerik/hapsedilen-taksimprotesto-hakkinin-adim-adim-nasil-kisitlandigina-bir-ornek> (These public spaces are chosen from secluded areas where there is limited transportation).

⁵⁶ Ibid.

⁵⁷ See D. Çiğdem Sever, (ESHID, 2022) (n. 53).

⁵⁸ In particular, the bans were based on Articles 17 and 19 of Law No. 2911

⁵⁹ Articles 11(A) and 11(C) of Law No. 5442.

⁶⁰ FIDH report (n. 24) p. 15.

Rights/Eşit Haklar İçin İzleme Derneği, “ESHID”), show that general bans have been increasingly used in recent years.⁶¹

Year	2016	2017	2018	2019	2020	2021	2022 (Jan.- October)
Number of general bans	51	73	58	141	249	232	87

- 32.** In addition to the bans imposed by provincial governors (as above), in the context of the Covid-19 pandemic, the Minister of Interior issued four circulars in 2020 and three circulars in 2021 imposing general bans on public gatherings in all cities of Türkiye.⁶²
- 33.** The general bans imposed by the authorities have covered a wide range of activities, including outdoor assemblies such as demonstrations, press statements, sit-ins, concerts, setting up stands and tents, collecting signatures, and distributing leaflets and pamphlets, as well as indoor activities such as conferences, panels, exhibitions, plays, and film screenings.⁶³
- 34.** The duration of the bans has been also very problematic. Notably, according to the research conducted by the Human Rights Foundation of Turkey (“TİHV”), between 1 January 2019 and 31 January 2020, the authorities issued at least 147 decisions in 25 cities to ban all assemblies and events for a period ranging from 2 days to 395 days.⁶⁴ Some governors automatically extended an existing ban by imposing another ban at the end of the previous one, creating an uninterrupted ban for a period much longer than 30 days.⁶⁵ In particular, Eastern and South-Eastern provincial governors declared frequent blanket bans on all demonstrations and events.⁶⁶ Between 2018 and 2021, the top 10 cities with the most bans were from these regions (except for Istanbul).⁶⁷ As the most striking example, in the city of Van, a general ban on all public gatherings and events was first imposed on November 21, 2016, and with the additional bans introduced by the authorities, all public gatherings and events were banned uninterruptedly until 27 June 2022.⁶⁸ In the meantime, 14 actions for annulment that were filed against these bans were ultimately dismissed by the Van Administrative Court⁶⁹ and Elazığ Regional Administrative Court.⁷⁰ As a result, the authorities prevented the exercise of the right to freedom of assembly in Van for nearly 6 years. Lastly, similarly, in Hakkari, general bans on all public gatherings and events have been ongoing uninterruptedly since 4 January 2022.⁷¹

⁶¹ These statistics are shared by the ESHID for this submission. See also, ESHID, ‘Barışçıl Toplantı ve Gösteri Hakkı İzleme Raporu 2021’, p. 15 (While a big majority of these decisions concern a ban on assemblies, some of those decisions allowed for the assemblies under the condition of authorisation). While the general bans appear to have decreased in 2022, the specific bans and systematic violent intervention to peaceful assemblies continue.

⁶² Statistics shared by ESHID for his submission.

⁶³ FIDH report (n.24), p. 16.

⁶⁴ TİHV, ‘1 Ocak 2019 ile 31 Ocak 2020 Tarihleri Arasında Valilik Yasakları Nedeniyle Kullanılmayan Toplanma ve Gösteri Yapma Hakkı’ (9 February 2020): <https://tihv.org.tr/arsiv/01-ocak-2019-ile-31-ocak-2020-tarihleri-arasinda-valilik-yasaklari-nedeniyle-kullanilmayan-toplanma-ve-gosteri-yapma-hakki/>.

⁶⁵ Ibid.

⁶⁶ European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, (2021). Turkey Report 2021, p 16; D. Çiğdem Sever, (ESHID, 2022) (n. 53), p. 17.

⁶⁷ Ibid, p. 17: The list consists: Van, İstanbul, Batman, Elazığ, Hakkari, Mardin, Siirt, Muş, Adana, Tunceli.

⁶⁸ Ibid, p. 14; Bianet, ‘Hak Savunucuları Van’da Hakim Karşısındaydı’ (18 October 2022) <https://m.bianet.org/bianet/print/268654-hak-savunuculari-van-da-hakim-karsisindaydi>;

⁶⁹ D. Çiğdem Sever, (ESHID, 2022) (n. 53), p. 15 :

⁷⁰ ESHID, *Barışçıl Toplantı ve Gösteri Hakkı İzleme Raporu 2021*, p. 21.

⁷¹ Information gathered by Hafıza Merkezi.

Specific bans

35. In addition to the general bans, additional bans were issued by provincial governorates on demonstrations and events concerning specific matters, such as bans on LGBTI+ assemblies and events, the opposition parties' assemblies and events, or demonstrations organised for special days such as International Labour Day or International Women's Day, under Law No. 5442 and Law No. 2911.⁷² The statistics provided by the *ESHID*, show that the authorities have also often used specific bans to restrict the exercise of the right to freedom of assembly.

Year	2016	2017	2018	2019	2020	2021	2022 (Jan.-Oct.)
Number of specific bans	53	47	56	158	115	66	46

36. The authorities imposed specific bans on assemblies and events related to a wide range of issues, based on abstract and generic grounds for restrictions, which are often a word-for-word copy of the grounds for restrictions provided in the law, such as, "public safety and security," "prevention of crime," "protections of rights and freedoms of others," "public health," and "public morality".⁷³ Sometimes the authorities also cited other abstract grounds which FIDH consider "do not find a legal basis in domestic or international law and could not possibly justify imposing restrictions on freedom of assembly in a democratic society".⁷⁴ Decisions to ban and suspend often lacked a detailed and concrete justification.⁷⁵ For instance, while a public security risk was often cited, there was no justification as why the suspension or ban of the assemblies and events was necessary rather than taking other safety measures.⁷⁶ Moreover, the state of emergency and the Covid-19 pandemic were also selectively used as a pretext by the Government and governors to ban peaceful protests, while events and assemblies organised by supporters of the ruling parties were allowed.⁷⁷

37. Assemblies and events that have been systematically subjected to specific bans by the authorities include, inter alia, the following:

-LGBTI+ assemblies

38. First, during the 2016-2018 state of emergency, all demonstrations and events by LGBTI+ organisations were banned indefinitely on what were clearly discriminatory grounds. The Ankara governor prohibited indefinitely all kinds of LGBTI+ events (in a decision dated 18 November 2017). This ban continued after the state of emergency and was ended only by an administrative court decision in April 2019.⁷⁸ As a result, a 1 ½ year blanket ban was imposed uninterruptedly on

⁷² Article 11(A), (B) and (C), and Article 32 (Ç) of Law no. 5442, and Article 17 of Law no. 2911.

⁷³ FIDH report (n. 24), p. 16-17.

⁷⁴ Ibid.

⁷⁵ D. Çiğdem Sever, (ESHID, 2022) (n. 53), p. 20.

⁷⁶ Ibid.

⁷⁷ İHD, 'Contribution to the report of Special Rapporteur on the rights to freedom of peaceful assembly and of association during crises situations' (n. 24)

⁷⁸ D. Çiğdem Sever, (ESHID, 2022) (n. 53), p. 16.

The Ankara governor's decision (no. 32017) of 18 November 2017 reads as follows: "Information is obtained from various social media and some written and visual media outlets that various non-governmental organizations under the name of *LGBTI* (Lesbian, gay, bisexual, transgender or transvestite) and *LGBTI* (Lesbian, gay, bisexual, transgender, intersex) will organize events such as cinema, cinevision, theater, panel, conversation and exhibition involving social sensitivities in various parts of our province." ... "Considering that the aforementioned posts will openly incite hatred and enmity of a segment of the society against another segment with different characteristics in terms of social class, race, religion, sect or region and that it may therefore lead to a clear and imminent threat in terms of public security and jeopardize public order,

all types of LGBTI events in Ankara.⁷⁹

- 39.** Second, since 2015 the authorities have imposed numerous specific bans on Pride Parades around Türkiye. Most notably, starting in June 2015,⁸⁰ the Istanbul and Beyoğlu Governorates⁸¹ have systematically banned the Trans Pride March and Istanbul Pride March which had regularly taken place in Taksim, Istanbul since 2003.⁸² Moreover, other provincial governorates also imposed bans on the Pride Parade in other cities and districts of Türkiye, including İzmir,⁸³ Eskişehir⁸⁴, Çanakkale, Kadıköy and Datça.⁸⁵
- 40.** Third, in addition to provincial governorates, university administrations also took decisions to ban LGBTI+ events and assemblies in their campus. Notably, the Middle East Technical University (“METU”) administration decided to ban the Pride March and other LGBTI+ events in 2018,⁸⁶ 2019,⁸⁷ and in 2022.⁸⁸ Similarly, the Boğaziçi University administration also banned the Pride March in 2022.⁸⁹
- 41.** It should be noted that while some of the specific bans were later annulled by the administrative courts, the decisions of annulment were delivered long after the planned dates of the assemblies.⁹⁰ In the meantime, the assemblies could not take place, or the police intervened to

prevention of crime, protection of general health and morals or the rights and freedoms of others, some groups may act on certain social sensitivities and react to the groups and individuals who will participate in the planned event, ultimately causing provocations.” Available at, <http://www.ankara.gov.tr/yasaklama-kararina-iliskin-basin-duyurusu-19112017>.

⁷⁹ Ibid.

⁸⁰ The Trans Pride March took place on 22 June 2015 without any ban or intervention, whereas the Istanbul Pride March of 28 June 2015 was banned by the Istanbul Governorate and violent police intervention took place during the demonstration. The authorities’ initial reasoning for the ban was based on the Parade’s coincidence with Ramadan, a month with a particular spiritual meaning to Muslims. Although the Pride Parade did not again coincide with Ramadan in 2017, it was still banned, this time for security concerns, signalling that Ramadan was only a pretext used by the authorities to crack down on the LGBTI+ community.

Later on, both the Trans Pride March and the Istanbul Pride March in Taksim, Istanbul were banned by the authorities and police intervention took place during those demonstrations.

⁸¹ Kaos GL, ‘Beyoğlu Kaymakamlığı’ndan LGBTI+ Onur Yürüyüşü gini eylem yasağı’ (26 June 2021)

<https://kaosgl.org/haber/beyoglu-kaymakamligi-ndan-lgbti-onur-yuruyusu-gunu-eylem-yasagi> ;

⁸² FIDH report (n. 24), pp. 16-17; Umut Rojda Yıldırım, Sosyal Politika, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği (SPoD), ‘2015’ten Günümüze Yasaklarla İstanbul Onur Yürüyüşü’ (Report concerning the restrictions on the Istanbul Pride March since 2015) (2022).

See also on the history of Trans Pride March in Istanbul, <https://kaosgl.org/haber/trans-onur-yuruyusu-nun-8-yili-bize-ikinci-sinif-vatandas-gibi-davranilmasina-izin-vermeyecegiz>.

⁸³ Kaos GL, ‘Ban on İzmir Pride: Get used to us, we are not leaving!’ (18 June 2019),

<https://kaosgl.org/haber/izmir-valiligi-onur-yuruyusu-demeden-onur-yuruyusu-nu-yasakladi-izmir-de-acik-alan-etkinlikleri-3-gun-sureyle-yasaklandi>;

Kaos GL, ‘İzmir Valiliği Onur Yürüyüşü demeden Onur Yürüyüşü’nü yasakladı: İzmir’de açık alan etkinlikleri 3 gün süreyle yasaklandı!’ (25 June 2022), <https://kaosgl.org/haber/izmir-valiligi-onur-yuruyusu-demeden-onur-yuruyusu-nu-yasakladi-izmir-de-acik-alan-etkinlikleri-3-gun-sureyle-yasaklandi>.

⁸⁴ Gazete Duvar, ‘Eskişehir Valiliği’nden “Onur Haftası” yasağı’ (24 June 2022), <https://www.gazeteduvar.com.tr/eskisehir-valiliginden-onur-haftasi-yasagi-haber-1570736>.

⁸⁵ TİHV), ‘2022 Onur Ayı Etkinliklerine Yönelik Hak İhlalleri’, <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/2022-onur-ayi-etkinliklerine-yonelik-hak-ihlalleri/>.

⁸⁶ Diken, ‘ODTÜ’de Onur Yürüyüşü’ne çağrı: Rektörlük yasakladı, öğrenciler kararlı’ (10 May 2018),

<https://www.diken.com.tr/odtude-onur-yuruyusune-cagri-rektorluk-yasakladi-ogrenciler-kararli/>

⁸⁷ Kaos GL, ‘Hükümet’ten ODTÜ Onur Yürüyüşü yanıtı: “Rektörlük yasakladı, ayırıcı değiliz’ (16 April 2020),

<https://kaosgl.org/haber/hukümet-ten-odtu-onur-yuruyusu-yaniti-rektorluk-yasakladi-ayrimci-degiliz>

⁸⁸ Kaos GL, ‘Devlet LGBTİ+’lara savaş açtı: 37 günde 10 yasak, en az 530 gözaltı’ (27 June 2022),

<https://kaosgl.org/haber/devlet-lgbti-lara-savas-acti-37-gunde-10-yasak-en-az-530-gozalti>

⁸⁹ Ibid.

⁹⁰ For example, the Istanbul Governorate’s decision to ban the Pride March in Bakırköy in 2019 was later found unlawful by the Istanbul 10th Regional Administrative Court on 7 October 2020 in the appeal (See for more detail <https://kaosgl.org/haber/mahkeme-2019-istanbul-onur-yuruyusu-icin-bakirkoy-yasagini-iptal-etti>). Similarly, in 2020, İzmir Regional Administrative Court also annulled the ban on the Pride March in İzmir in 2019 stating that the Pride March is a fundamental right and freedom that should be protected in a democratic society since it would contribute to pluralism and

enforce the dispersal of those who attempted to exercise their right to freedom of peaceful assembly.⁹¹ Moreover, despite the administrative courts' decisions finding that a small number of such bans were unlawful since the authorities could not provide concrete justification for their interference with the right to freedom of assembly, in the aftermath of these decisions, the authorities still continued to impose similar bans on LGBTI+ events and demonstrations.

- *Assemblies concerning women's rights*

42. In recent years the authorities have imposed significant bans on events and assemblies organised by women's rights groups, in particular for International Women's Day (8 March) and the International Day for the Elimination of Violence against Women (25 November).
43. First of all, in recent years, the Feminist Night March, which has been organised on 8 March in Taksim, Istanbul since 2003 by various women's rights organisations, has faced significant bans imposed by the authorities. Notably, in the last three years, there were specific bans issued to halt the events and assemblies on 8 March Women's Day by the governorate of Istanbul, and the governorates of Beyoğlu and Beykoz districts.⁹²
44. Secondly, the Turkish authorities also started banning demonstrations organised for November 25, the International Day for the Elimination of Violence Against Women. This year, Beyoğlu,⁹³ Diyarbakır,⁹⁴ and Dersim (Tunceli) governorates⁹⁵ all issued such a ban.
45. Thirdly, other assemblies concerning violence against women and domestic violence were also prevented by specific bans. Several events and assemblies organised to protest against the withdrawal from Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence were banned by the provincial governorates, citing the pretext of the Covid-19 pandemic.⁹⁶ However, at the same time, the government allowed several meetings held in support of the ruling parties.⁹⁷

peaceful coexistence (see for more detail <https://kaosgl.org/en/single-news/ban-on-7th-izmir-lgbti-pride-parade-has-been-annulled>). Lastly, in 2020, Ankara 7th Regional Administrative Court annulled the ban on the METU Pride March, which had been planned for 2019 (see for more detail, <https://kaosgl.org/haber/mahkeme-9-odtu-onur-yuruyusu-yasagini-iptal-etti>).

⁹¹ See below Section IV.B.2.

⁹² See for the bans in Taksim, Istanbul, in 2022 on assemblies, marches and press releases, Stockholm Center for Freedom, 'Governor's office bans annual Feminist Night March in Istanbul' (8 March 2022), <https://stockholmcf.org/governors-office-bans-annual-feminist-night-march-in-istanbul/>; Evrensel, 'İstanbul Valiliği, Taksim'deki 8 Mart yürüyüşünü yasakladı' (7 March 2022), <https://www.evrensel.net/haber/456525/istanbul-valiligi-taksimdeki-8-mart-yuruyusunu-yasakladi> See also for the Beykoz district Governor's ban on all events and protests that day, ESHID, 'Barışçıl Toplantı ve Gösteri Hakkı Ocak-Mart 2022' (2022) https://www.esithaklar.org/wpcontent/uploads/2022/05/ESHID_Toplantı-ve-Gösteri-Hakkı-Ocak-Mart-2022-Bulteni.pdf; See for the ban in 2020 in Taksim, Deutsche Welle, 'Feminist Gece Yürüyüşü'ne polis müdahalesi' (9 March 2020), <https://www.dw.com/tr/feminist-gece-y-c3%BCr%C3%BCy%C3%BC%59F%C3%BCne-polis-m%C3%BCdahalesi/a-52688405>.

⁹³ Bianet English, 'November 25 demonstrations banned in Istanbul's Beyoğlu' (24 November 2022), <https://m.bianet.org/english/women/270479-november-25-demonstrations-banned-in-istanbul-s-beyoglu>.

⁹⁴ Gazete Duvar, 'Diyarbakır'da 25 Kasım yürüyüşüne valilik yasağı' (25 November 2022), <https://www.gazeteduvar.com.tr/diyarbakirda-25-kasim-yuruyusune-valilik-yasagi-haber-1590889>.

⁹⁵ Evrensel, '25 Kasım 2022 | Kadınlar eşit, özgür, şiddetsiz bir yaşam için her yerde alandı' (25 November 2022), <https://www.evrensel.net/haber/475516/25-kasim-2022-kadinlar-esit-ozgur-siddetsiz-bir-yasam-icin-her-yerde-alandayi>.

⁹⁶ See for example, the ban imposed by the Antalya Governorate for 10 days starting on 23 November 2020: <https://www.dokuz8haber.net/antalya-valiliginin-istanbul-sozlesmesi-korkusu-kentte-10-gunluk-yasak>; see also ESHID's bulletin concerning the right to peaceful Assembly: October-December 2021 (available at <https://www.esithaklar.org/wp-content/uploads/2022/02/%F0%9F%93%A2-Baris%CC%A7c%CC%A7il-Toplantı-ve-Go%CC%88steri-Hakkı-Bu%CC%88İteni-Ekim-Aralık-2021.pdf>) noting the Tunceli Governorate's ban on the events concerning the 25 November International Day for the Elimination of Violence against Women. Ekmek ve Gül, 'Dersim'de 25 Kasım Standına Valilik Engeli' (18 November 2021) <https://www.ekmekvegul.net/gundem/dersimde-25-kasim-standina-valilik-engeli>

⁹⁷ For example, as the İHD underlines in its 'Contribution to the report of Special Rapporteur on the rights to freedom of peaceful assembly and of association during crises situations' (n 77), at the same period when the authorities imposed

- *Saturday Mothers/People*

46. Saturday Mothers/People are a group of human rights defenders who have gathered every Saturday since 27 May 1995 in Istanbul's Galatasaray Square for a peaceful protest demanding accountability for the well-documented enforced disappearances that took place during the 1980s and 1990s in Türkiye. The gatherings take place in the form of a vigil with mothers and relatives of the victims holding pictures of their loved ones. These vigils, which saw the participation of larger numbers of people on landmark dates such as the 500th and 600th weeks,⁹⁸ had been held peacefully in Galatasaray Square until it was subject to a ban on 25 August 2018 by the Beyoğlu district governor on the ground that Galatasaray Square was not part of the lawful gathering places identified pursuant to Law No. 2911 and that the authorities had not been notified 48 hours prior to the vigil.⁹⁹ In his statement concerning the ban, the governor referred to Articles 10 and 17 of Law No. 2911 and Article 32(ç)¹⁰⁰ of the Law 5442 of Provincial Governance.¹⁰¹ Subsequently, the police has been violently dispersing the participants by intervening with excessive force and arresting them. After this ban was put in place and the police adopted the practice of the violent dispersal of the crowd, Galatasaray Square has become a hotspot for police surveillance where not only the Saturday Mothers/People but any opposition group has been prevented from holding peaceful demonstrations.
47. Similarly, weekly vigils taking place in the Diyarbakır Koşuyolu Park since 2009 -organised by the Human Rights Association and relatives of the victims of enforced disappearances- and in Batman were banned *indefinitely* by the Diyarbakır and Batman Governors on 1 September 2018 on the ground of "public security".¹⁰²

2. Police Interventions at Demonstrations, Use of Force and Torture

48. In practice, peaceful protestors in Türkiye often risk being subject to police violence and arbitrary arrest simply by participating in demonstrations which can arbitrarily and easily be declared "unlawful". An examination of Turkish law enforcement officials' practices during assemblies reveals, in particular, the following:
- The police systematically enforce the dispersal of assemblies despite their peaceful nature.
 - While dispersing the crowd, the police persistently use excessive force -in some cases life-threatening force - on protestors, which in itself may amount to ill-treatment or torture.
 - Peaceful protestors are systematically arrested in large numbers and ill-treated during their police custody.
 - There is no serious *ex post facto* review to assess the reasonableness and proportionality of the administrative authorities' actions or the use of excessive force by the police.

bans on assemblies concerning Women Rights', they allowed the meetings staged to support the military operations of Azerbaijan.

⁹⁸ The vigils were stopped for ten years between 1999 and 2009. They resumed and have continued uninterrupted since then. From September 2018, they were held outside the offices of the Istanbul branch of the Human Rights Association in Taksim. During the onset of the Covid-19 pandemic, they were held online.

⁹⁹ Amnesty International, Human Rights Watch and Front Line Defenders, Joint Public Statement, 'Turkey: Authorities Should Seek Acquittal Of All In The Saturday Mothers/People Trial' 24 March 2021, <https://www.amnesty.org/en/documents/eur44/3890/2021/en/>.

¹⁰⁰ The provision allows district governors to take necessary measures, including pre-emptive measures taken by the police, to ensure security and public order.

¹⁰¹ BBC News Türkçe, "Cumartesi Anneleri'nin 700. hafta oturumuna yasak", 25 August 2018, <https://www.bbc.com/turkce/haberler-turkiye-45307188>

¹⁰² Bianet, "Kayıp Yakınlarının Diyarbakır ve Batman'daki Eylemleri de Yasaklandı", 1 September 2018, <https://m.bianet.org/kurdi/insan-haklari/200398-kayip-yakinlarinin-diyarbakir-ve-batman-daki-eylemleri-de-yasaklandi>.

49. Information published by the ESHID (shown in the table below) reveals how police intervention in peaceful demonstrations and the arrest of demonstrators have been widespread.¹⁰³ It also shows that despite the end of the state of emergency in 2018, the number of police interventions and police arrests increased in 2019. On the other hand, while there appears to be a decrease in number of police interventions after 2019, it should be noted that due to COVID restrictions, fewer demonstrations took place. Moreover, the serious chilling effect arising from the systematic violent police intervention at peaceful assemblies and the criminalisation of peaceful protestors have resulted in a decrease in the participation of demonstrations.¹⁰⁴ Also, the striking number of arrests in 2022 should be considered indicative of the increasing excessive police interventions at demonstrations.

50. Reports also indicate that the arrested demonstrators have often been detained in police custody or subjected to other forms of judicial control measures such as travel bans, house arrest, and the obligation to report weekly to the police station.¹⁰⁵

	2016	2017	2018	2019	2020	2021	2022 (Jan-Oct)
Number of police interventions	236	282	552	1354	552	614	274
Number of arrests	2426	2358	2499	3544	1663	1941	3498
Number of injured protestors as a result of police intervention	28	61	14	126	34	64	NA

51. According to data gathered by the TIHV, in 2021 at least 3,540 people¹⁰⁶ and in 2020 at least 1,929 people were subject to ill-treatment and torture as a result of police intervention at peaceful assemblies in which they had participated.¹⁰⁷ In numerous cases, the police systematically used excessive force on the protestors, resulting in injuries.¹⁰⁸ The data gathered by the ESHID also reveals different methods that have been used by law enforcement officers since 2016 to disperse peaceful demonstrations, resulting in injuries to demonstrators. These methods include the use of tear gas, pressurised water, physical force, plastic bullets and beatings with a truncheon.¹⁰⁹ Moreover, according to the same data, on at least four occasions, law enforcement officers used live ammunition during their interventions.

¹⁰³ These statistics are shared by the ESHID for this submission.

¹⁰⁴ Stated during an interview with ESHID reporters.

¹⁰⁵ FIDH report, (n. 24) p. 27.

See for example, TIHV/HRFT, 'Türkiye İnsan Hakları Raporu 2021' (September 2022) p. 251 (among arrested demonstrators 242 people were released with judicial control and house arrest was imposed on 45 people); TIHV/HRFT, 'Türkiye İnsan Hakları Raporu 2020' (June 2021) p. 215 (100 arrested demonstrators were released with the condition of judicial control and 77 people with travel bans); TIHV/HRFT, 'Türkiye İnsan Hakları Raporu 2019' (June 2020) p. 227 (among the arrested demonstrators, 166 people were released with the condition of judicial control).

¹⁰⁶ TIHV and İHD, 'Verilerle 2021 Yılında Türkiye'de İnsan Hakları İhlalleri', p. 11, <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2021-yilinda-turkiyede-insan-haklari-ihlalleri/>.

¹⁰⁷ TIHV and İHD, 'Verilerle 2020 Yılında Türkiye'de İnsan Hakları İhlalleri', <https://tihv.org.tr/basin-aciklamalari/verilerle-2020-yilinda-turkiyede-insan-haklari-ihlalleri/>.

¹⁰⁸ See for example, TIHV/HRFT, 'Türkiye İnsan Hakları Raporu 2021' (September 2022), 'Türkiye İnsan Hakları Raporu 2020' (June 2021), and 'Türkiye İnsan Hakları Raporu 2019' (June 2020) pp. 27-49;

ESHID, 'Barışçıl Toplantı ve Gösteri Hakkı İzleme Raporu 2021'; ESHID, 'Freedom of Peaceful Assembly Monitoring Report October 2015 – November 2016 Turkey', <https://www.esihaklar.org/wp-content/uploads/2017/03/AMER-Freedom-of-Assembly-Annual-Report.pdf>.

¹⁰⁹ The information is shared by the ESHID for this submission. See also (n. 97).

52. According to various NGO reports, the police systematically intervened in peaceful events and protests concerning a wide range of issues, including but not limited to, labour rights, protection of environment, women rights, LGBTI+ rights, political opposition activities, conditions of detention, campaigns for justice, right to a fair trial, police violence, right to life, mass dismissals, and human rights violations occurring in the Kurdish South-East.¹¹⁰ These widespread and abusive police interventions continue to render the right to freedom of assembly nugatory in Türkiye especially during, and in the aftermath of, the state of emergency. On the one hand, the persistent use of excessive force on peaceful protestors creates a chilling effect on the right to peaceful assembly and deters right-holders from participation in peaceful assemblies. On the other hand, the normalisation of the excessive use of force to repress demonstrations contributes to the stigmatisation and discrediting of civil society actors in the eyes of the general public.¹¹¹ Notably, civil society members exercising their right to freedom of assembly are beaten, man-handled, abused, handcuffed, and taken into custody by the police, and thus are marginalised as “criminals”, “terrorism supporters” and “extremists” by the authorities.¹¹² In the following paragraphs, we outline some of the most recent and striking examples of police practice that severely restrict the effective exercise of the right to freedom of assembly.
53. Law enforcement officials have systematically carried out violent interventions in the events and demonstrations on which the authorities have imposed general and specific bans. Notably, the police have been using unwarranted and excessive force against Istanbul Pride LGBTI+ events and the Pride March since 2016.¹¹³ In June 2022, during Pride Month, several people sustained injuries and were hospitalised due to the excessive use of force by police officers. According to the reports, at least 526 LGBTQI+ protestors, HRDs, journalists and lawyers were arrested during this event, and were subjected to torture and/or inhuman treatment,¹¹⁴ including but not limited to the use of pepper gas from a short distance, handcuffing behind back, beating and verbal abuse.¹¹⁵
54. Similarly, women’s rights groups’ peaceful demonstrations (which are held annually on 8 March and 25 November) to draw attention to and protest against the overwhelming number of

¹¹⁰ See (n. 105).

¹¹¹ FIDH report, (n. 24) p. 28

¹¹² Ibid.

¹¹³ Council of Europe, Commissioner for Human Rights, (2021, June 17). CommDH(2021)20, Letter to Ministry of Interior and Ministry of Justice of Turkey, <https://rm.coe.int/letter-to-mr-suleyman-soylu-minister-of-interior-and-mr-abdulhamit-gul/1680a2e486>; United Nations Special Procedures, (2020, February 11). Communication: Türkiye, AL TUR 1/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25056>; United Nations Special Procedures, (2018, September 18). Communication: Türkiye, AL TUR 12/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24083>.

¹¹⁴ Council of Europe, Commissioner for Human Rights of The Council of Europe Dunja Mijatović, (2020, February 19), ‘Report Following Her Visit to Turkey From 1 to 5 July 2019’, CommDH(2020)1, §§146-147, <https://rm.coe.int/090000168099823e>; Amnesty International, Turkey 2021 Report(2021), <https://www.amnesty.org/en/location/europe-and-central-asia/turkey/report-turkey/>; Amnesty International, (2019, June 30), ‘Turkey: Police use unwarranted and excessive force against Istanbul Pride’, <https://www.amnesty.org/en/latest/news/2019/06/turkey-police-use-unwarranted-and-excessive-force-against-istanbul-pride/>.

¹¹⁵ TIHV, ‘2022 Onur Ayı Etkinliklerine Yönelik Hak İhlalleri’, <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/2022-onur-ayi-etkinliklerine-yonelik-hak-ihlalleri/>.

¹¹⁶ Kaos GL, ‘Ankara Onur Yürüyüşü’nde şiddet gören gazeteciler: İktidar her sene dozunu arttırdığı bir savaş ilan etti’ (18 July 2022), <https://kaosgl.org/haber/ankara-onur-yuruyusu-nde-siddet-goren-gazeteciler-iktidar-her-sene-dozunu-arttirdigi-bir-savas-ilan-etti>; Kaos GL ‘Onur Yürüyüşleri bilançosu artıyor: 582 gözaltı, sokakta işkence, bitmeyen isyan!’, (8 July 2022). <https://kaosgl.org/haber/onur-yuruyusleri-bilancosu-artiyor-582-gozalti-sokakta-iskence-bitmeyen-isyan>; Kaos GL, İzmir 10. ‘LGBTI+ Onur Yürüyüşü: Aktivistler, avukatlar, milletvekilleri ablukaya alındı, darp edildi’ (21 July 2022), <https://kaosgl.org/haber/izmir-10-lgbti-onur-yuruyusu-aktivistler-avukatlar-milletvekilleri-ablukaya-alindi-darp-edildi>; Kaos GL, (2022, July 20), ‘Eskişehir Onur Yürüyüşü: LGBTI+’lar saldırıya uğrarken, nefret suçu işleyenlere dokunulmadı’ (20 July 2022), <https://kaosgl.org/haber/eskisehir-onur-yuruyusu-lgbti-lar-saldiriya-ugrarken-nefret-sucu-isleyenlere-dokunulmadı>

femicides, domestic violence, inequality, and discrimination in Türkiye, have been dispersed by the police violently over the last several years. During the 8 March demonstrations in 2022 in Istanbul, İzmir, Antalya, Ankara and Adana, police violently dispersed the peaceful protestors and detained 94 women's rights defenders.¹¹⁶

55. Kurdish women's rights defenders were also targeted after their participation in the 8 March 2022 demonstrations in Diyarbakır. On 16 March 2022, Turkish law enforcement officials raided the houses of 24 women rights defenders and unlawfully arrested them.¹¹⁷ While 13 women were released pending trial, others were kept in pre-trial detention. Serious allegations have been made in relation to the inhuman and degrading treatment of the women human rights defenders during their arrest, police custody and pre-trial detention.
56. On 25 November 2022, the police similarly used unwarranted and excessive force in Istanbul, which resulted in the arrest of at least 216 women, which was accompanied by torture and ill-treatment.¹¹⁸ During the protest, the police resorted to violence from the very start, used insulting and harassing language, used shields, kicked and hit women protestors, causing some women to faint, breaking the leg of one protestor, leaving some bloodied and rear-cuffing them and taking them into custody.¹¹⁹
57. Police have not only intervened in assemblies which are banned pre-emptively by the authorities, but also violently dispersed many other peaceful demonstrations. In 2021, Boğaziçi University students, who held peaceful demonstrations against the presidential appointment of their rector, were subjected to a police crackdown. As a result, 1,088 students were arrested during the peaceful demonstrations, and 15 were injured as a result of the police excessive use of force.¹²⁰ Between 5 and 7 January 2022, the police used disproportionate force, reportedly resulting in the torture and inhuman treatment of students, including being handcuffed on their backs, beaten and subjected to insults and threats of rape.¹²¹
58. Similarly, in recent years, police have also been using excessive force in peaceful assemblies and demonstrations concerning labour rights and environmental issues. In 2021, the police intervened in at least sixteen peaceful assemblies, and demonstrations organised in the context of the May Day and arrested 354 people, accompanied by torture and ill-treatment.¹²² At 29 peaceful assemblies organised by workers, 489 people were arrested by the police resulting in the injury of seven people. Furthermore, in 2021, nine peaceful assemblies and demonstrations concerning the right to a healthy environment were dispersed by law enforcement officers, and at least 100

¹¹⁶ ESHID, 'Barışçıl Toplantı ve Gösteri Hakkı Bülteni: Ocak-Mart 2022' (2022) (n 88).

¹¹⁷ TIHV/HRFT, 'Diyarbakır'da Kadın Hakları Savunucularının Tutuklanmaları Hakkında Ortak Açıklama' (2022, March 3) <https://tihv.org.tr/basin-aciklamalari/diyarbakirda-kadin-haklari-savunucularinin-tutuklanmalari-hakkinda/>. See also 'Urgent Action Letter to the UN Special Procedures on the ongoing unlawful and arbitrary detention and judicial harassment of women human rights defenders in Turkey', <https://www.turkeylitigationssupport.com/blog/2022/5/16/urgent-action-letter-to-the-un-special-procedures-on-the-ongoing-unlawful-and-arbitrary-detention-and-judicial-harassment-of-women-human-rights-defenders-in-turkey>.

¹¹⁸ Bianet English, 'November 25 Platform makes criminal complaint for police brutality' (30 November 2022), <https://m.bianet.org/english/women/270763-november-25-platform-makes-criminal-complaint-for-police-brutality>

¹¹⁹ Ibid.

¹²⁰ TIHV and İHD, *Verilerle 2021 Yılında Türkiye'de İnsan Hakları İhlalleri*, <https://www.hrw.org/news/2021/02/18/turkey-student-protesters-risk-prosecution>; TLSP and others, 'Urgent Action Letter to the UN Office of the High Commissioner for Human Rights Concerning the Boğaziçi university Protest and Increasing Threat Against LGBTI+ Rights', <https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/60521694bc76c13c7d4df8cc/1615992469552/UN+urgent+action+letter+Boğaziçi+protests+and+LGBTI%2B+website.pdf>

¹²¹ Amnesty, 'Turkey: Students allege ill-treatment in detention: Boğaziçi University protestors' (13 January 2021) <https://www.amnesty.org/en/documents/eur44/3501/2021/en/>.

¹²² TIHV and İHD, *Verilerle 2021 Yılında Türkiye'de İnsan Hakları İhlalleri*.

people were arrested.¹²³

59. While the statistics and examples cited above cannot be comprehensive, they provide an accurate picture of the situation on the ground revealing the gravity of this systemic problem in Türkiye. Despite the seriousness of the situation, police officers are rarely criminally prosecuted for using excessive force.¹²⁴ In fact, in the majority of cases of police brutality, criminal proceedings are not initiated against the alleged perpetrators because governors do not grant the requisite permission under Law No. 4483 on the Prosecution of Public Officials.¹²⁵ The administrative and judicial practice in the country demonstrates that there is a general climate of impunity for the perpetrators. This aggravates the police violence and constitutes an additional hurdle for protesters in exercising their right to freedom of assembly and obtaining justice in case of violations.¹²⁶

3. The criminalisation of peaceful protestors

60. In addition to the imposition of bans on assemblies and the use of excessive force to disperse peaceful demonstrations, the systematic use of criminal sanctions and administrative fines against participants of peaceful assemblies continues to be a very serious problem.

61. The widespread and systematic use of Law Nos. 2911 and 5442 against individuals who try to exercise their right to freedom of peaceful assembly, often results in criminal sanctions under Law No. 2911 or misdemeanour fines under Law No. 5326.¹²⁷ The practice of the judicial authorities shows that there has been a systematic criminalisation of those who take part in peaceful assemblies. Notably, the official statistics below concerning the high number of criminal investigations, prosecutions and convictions under Law No. 2911 reflect how widespread is the use of this law against protestors.¹²⁸ We would also emphasise that the official statistics cited below (from the Directorate of Judicial Registry and Statistics), do not match the statistics that were provided to the CM in the Government's latest Action Plan.¹²⁹ The statistics below draw a more serious picture.

	2016	2017	2018	2019	2020	2021
Total number of decisions rendered by the public prosecutor for the suspects under Law No. 2911 ¹³⁰	21,576	11,702	8,728	7,331	6,770	7,704
Number of decisions of non-prosecution	5,698	3,356	2,039	1,977	2,197	3,214
Number of decisions instigating criminal proceedings	12,337	6,515	4,837	3,962	3,171	3,575

¹²³ TİHV and İHD, 'Verilerle 2021 Yılında Türkiye'de İnsan Hakları İhlalleri'.

¹²⁴ FIDH report, (n. 24) pp. 28-29.

¹²⁵ Law No. 4483 on the Prosecution of Public Officials published in the Official Gazette no. 23896, dated 4 December 1999.

¹²⁶ FIDH report, (n. 24) pp. 28-29.

¹²⁷ Rule 9.2 Communication from an NGO (Human Rights Joint Platform [IHOP]) (25/01/2019), 1340th meeting (March 2019) (DH), para. 7.

¹²⁸ Available at <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>

¹²⁹ See 443rd meeting (September 2022) (DH) - Action plan (08/07/2022) - Communication from Türkiye concerning the group of cases *Ataman v. Turkey* (Application No. 74552/01), [https://hudoc.exec.coe.int/eng/?i=DH-DD\(2022\)728E](https://hudoc.exec.coe.int/eng/?i=DH-DD(2022)728E) (for example number of decisions of non-prosecution are indicated significantly lower, i.e. as 1592, 1114,664,667,755 and 966 for 2016, 2017, 2018, 2019, 2020 and 2021 respectively).

¹³⁰ These decisions include the following: decisions finding no need for prosecution, decision to instigate criminal proceedings, decisions of lack of venue and jurisdiction, decisions of joinder and decisions of transfer to another department are also included in this number.

Number of convictions under Law No. 2911	2,306	1,749	2,341	2,002	1,389	1,674
Number of imprisonment sentence decisions	718	537	803	729	286	656
Number of decisions of judicial and administrative fine	450	341	275	303	697	197
Number of acquittal decisions	5,685	5,558	5,329	4,968	2,975	3,838
Number of decisions postponing the announcement of a judgement (<i>Hükmün Açıklanmasının Geri Bırakılması Kararı</i>)	1,687	1660	1,323	1,325	542	829

- 62.** Under Law No. 2911, if an assembly is considered as “unlawful” by the authorities, protestors often face criminal investigations, prosecutions and convictions despite the peaceful nature of their gathering.
- 63.** Alongside Law No. 2911, under Article 66 of Law No. 5442 on Provincial Administration, protestors who breach the decisions or preventative measures of the provincial governors concerning assemblies within their province taken under Article 11(c) of Law No. 5442, are subject to sanctions under Article 32 of the Law No. 5326 on Misdemeanors. Accordingly, “individuals taking part in a peaceful assembly that is deemed against Article 11(c) are automatically subject to sanctions in the form of fines”.¹³¹ In 2020 and 2021, many demonstrators were subjected to administrative fines that were issued under Law 5326 on Misdemeanors, for breaching the measures taken on account of the Covid-19 pandemic. According to information provided by TİHV, in 2021, at least 331 people who took part in different assemblies were fined for a total amount of 1,030,410 Turkish Liras (TRY),¹³² and in 2020, 335 demonstrators were subject to fines for a total amount of 790,490 TRY.¹³³
- 64.** In addition to being prosecuted for breaching Law No. 2911, peaceful protestors may also easily face other criminal charges. Notably, demonstrators have been charged under Article 265(1)¹³⁴ of the Criminal Code for obstructing the security forces in the execution of their duties by way of resistance together with other persons,¹³⁵ or under Article 299 of the Criminal Code for insulting the President of the Republic, because of the slogans chanted during assemblies.¹³⁶ Furthermore, some demonstrators have been charged under the Prevention of Terrorism Act (Law No. 3713), including for alleged ‘terrorist propaganda’.¹³⁷

¹³¹ Rule 9.2 Communication from a NGO (Human Rights Joint Platform [IHOP]) (25/01/2019), 1340th meeting (March 2019) (DH), para. 7.

The current amount of fine for taking part in an unlawful gathering is 427 TRY. This is around 8 percent of the current minimum wage in Turkey.

¹³² TİHV, *Türkiye İnsan Hakları Raporu 2021* (Türkiye Human Rights Report 2021), September 2022, p 213

<https://tihv.org.tr/yillik-insan-haklari-raporlari/2021-yillik-insan-haklari-raporu/>.

¹³³ TİHV, *Türkiye İnsan Hakları Raporu 2020* (Türkiye Human Rights Report 2020), June 2021, p. 215,

<https://tihv.org.tr/yillik-insan-haklari-raporlari/2020-yillik-insan-haklari-raporu/>.

¹³⁴ Article 265 § 1 of the Criminal Code reads as follows: “Anyone who uses methods of violence or threats against a public officer with a view to obstructing him or her in the execution of his or her duties shall be liable to imprisonment of between six months and three years”.

¹³⁵ ESHID, *Barışçıl Toplantı ve Gösteri Hakkı İzleme Raporu 2021*. 31, 47.

¹³⁶ Ibid. pp. 28-29.

¹³⁷ Ibid., p. 47.

See in particular, Article 7(2) of the Prevention of Terrorism Act which reads as follows:

65. Some of the recent examples concerning the criminal prosecution of individuals who participated in peaceful demonstrators illustrate Türkiye's recurrent repressive judicial practices. In one case, 46 people were charged with violating Article 32 of Law No. 2911 for "unarmed participation in an unauthorised assembly and refusal to disperse after warnings" in the aftermath of their violent arrest by the police during the 700th gathering of the Saturday Mothers/People on 25 August 2018. The criminal proceedings against the demonstrators are still pending before the Istanbul 27th Assize Court. While the fifth hearing of the proceedings took place on 21 September 2022, the police violently intervened and arrested the human rights defenders and relatives of victims who wanted to hold a press conference in front of the courthouse to protest the case.¹³⁸
66. In addition, criminal proceedings have been brought against demonstrators who took part in "Feminist Night Marches" organised on 8 March Women's Day. Women who joined the "Feminist Night March" in Istanbul in 2020,¹³⁹ 2021,¹⁴⁰ and 2022¹⁴¹ were criminally prosecuted for breaches of Law No. 2911. Similarly, 40 women in Antalya were also charged with breaching Law No. 2911 for participating in the "Feminist Night March" on 8 March 2022.¹⁴² While the demonstrators were mainly charged under Law No. 2911 for participating in an unlawful assembly and not dispersing despite warnings, demonstrators who took part in the 2021 March were also charged with insulting the President of the Republic because of the slogans chanted during the assembly.¹⁴³
67. Furthermore, demonstrators who took part in assemblies organised by the LGBTI+ community have also faced criminal prosecution. Following the Istanbul Pride Marches of 2016,¹⁴⁴ 2017,¹⁴⁵ 2018¹⁴⁶, and 2021¹⁴⁷ and the Trans Pride March of 2016,¹⁴⁸ criminal proceedings were brought against many LGBTI+ activists primarily for breaching Law No. 2911. Moreover, 19 LGBTI+ human rights defenders faced charges of participating in an unlawful assembly and failing to disperse despite being warned, for participating in the Pride march at the METU on 10 May 2019.¹⁴⁹ It should also be noted that the demonstrators were charged despite the fact that on 21 February

"Any person who disseminates propaganda in support of a terrorist organisation shall be liable to a term of imprisonment of between one and five years..." and

Article 2(2) of Law no. 3713 which is referred to in section 34/A of Law No. 2911 reads as follows:

"Persons who commit crimes on behalf of a (terrorist) organisation shall be considered as terror offenders even if they are not a member of that terrorist organisation."

¹³⁸ Sendika.Org, "Cumartesi Anneleri'ne adliye önünde gözaltı" (21 September 2022),

<https://sendika.org/2022/09/cumartesi-annelerine-adliye-onunde-gozalti-666442/>.

¹³⁹ <https://www.mlsaturkey.com/tr/2020deki-feminist-gece-yuruyusu-davasi-basladi/>.

¹⁴⁰ <https://t24.com.tr/haber/8-mart-feminist-gece-yuruyusu-davasi-cumhurbaskanligi-na-ihbar-amacli-davetiye-cikarildi,1018169>.

¹⁴¹ <https://www.gazeteduvar.com.tr/antalyada-8-mart-feminist-gece-yuruyusune-katilanlara-dava-haber-1565889>.

¹⁴² <https://www.gazeteduvar.com.tr/antalyada-8-mart-feminist-gece-yuruyusune-katilanlara-dava-haber-1565889>.

¹⁴³ ESHID, *Barışçıl Toplantı ve Gösteri Hakkı İzleme Raporu 2021*, p. 28; <https://www.gazeteduvar.com.tr/8-mart-yuruyusu-davasinda-kadinlar-savunma-yapti-haber-1555018>.

¹⁴⁴ 19 LGBTI+ activists who were arrested during the demonstration were prosecuted and later acquitted. See

<https://kaosgl.org/haber/akp-nin-istanbul-onur-yuruyusu-karnesi-8-yasak-en-az-103-gozalti-1>.

¹⁴⁵ 25 LGBTI+ activists who were arrested during the demonstration were prosecuted and later acquitted. See

<https://kaosgl.org/haber/akp-nin-istanbul-onur-yuruyusu-karnesi-8-yasak-en-az-103-gozalti-1>.

¹⁴⁶ 6 LGBTI+ activists who were arrested during the demonstration were prosecuted. While 4 of them were acquitted, 2 of them were convicted of obstructing the security forces in the execution of their duties by way of resistance together with other persons and of endangering traffic safety. See <https://kaosgl.org/haber/akp-nin-istanbul-onur-yuruyusu-karnesi-8-yasak-en-az-103-gozalti-1>.

¹⁴⁷ 41 LGBTI+ activists who were arrested during the demonstration were prosecuted. The criminal proceedings against 26 of them are still pending. The remaining demonstrators were acquitted. See the report of Umut Rojda Yıldırım, Sosyal Politika, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği (SPoD), *2015'ten Günümüze Yasaklarla İstanbul Onur Yürüyüşü* (Report concerning the restrictions on the Istanbul Pride March since 2015) (2022).

¹⁴⁸ 11 LGBTI+ activists who were arrested during the demonstration were prosecuted and later acquitted.

¹⁴⁹ <https://www.ilga-europe.org/news/joint-statement-metu-pride-human-rights-defenders-acquitted-upcoming-trial/>.

2019, the Ankara District Administrative Court No. 12 had lifted the blanket ban prohibiting all LGBTI+ activities in Ankara.¹⁵⁰ On 8 October 2021, the demonstrators were finally acquitted.

68. Another example involves the demonstrators who participated in May Day demonstrations. In 2021, criminal proceedings were brought against 28 demonstrators in Istanbul for breaching Law No. 2911.¹⁵¹ In 2020, at least 15 demonstrators, including the secretary general of the Turkish trade union federation DISK, were criminally charged for breaching Law No. 2911 for participating in an unlawful assembly and failing to disperse despite warnings, on account of their participation in the May Day march to Taksim Square in Istanbul.¹⁵² In addition to the criminal charges, the demonstrators were also subjected to administrative fines. Notably, in Istanbul, the demonstrators who were arrested during the May Day march were fined a total amount of 888,000 TRY.¹⁵³
69. Moreover, reports of NGOs and communications submitted to the UN Special Procedures¹⁵⁴ show that the continuous unlawful blanket bans have been used as a pretext to jail Kurdish protestors in the Eastern provinces of Türkiye since the attempted *coup* of 2016, under provisions of the Criminal Code and the Prevention of Terrorism Act.¹⁵⁵ The charges have been brought regarding assemblies and demonstrations including but not limited to Newroz celebrations, the Suruç Massacre,¹⁵⁶ political press statements, women's rights, Roboski (Uludere) airstrike,¹⁵⁷ the appointment of trustees replacing elected mayors, listening and dancing to Kurdish songs, or protests against environmental degradation. Out of 95 investigations initiated in 2021 concerning participants of peaceful assemblies, 63 were based in Eastern or South-Eastern cities. Similarly, 240 out of 1,257 criminal cases of protestors heard in 2021 were in these regions.¹⁵⁸
70. Lastly, it should be also noted that initiating disciplinary investigations and imposing disciplinary penalties on university students who exercise their right to freedom of peaceful assemblies have been also an ordinary practice in recent years in Türkiye.¹⁵⁹

¹⁵⁰ It was the administration of METU who unlawfully banned the peaceful gathering with a decision dated 6 May 2019.

¹⁵¹ ESHID, *Barışçıl Toplantı ve Gösteri Hakkı İzleme Raporu 2021*, p. 30.

¹⁵² <https://www.evrensel.net/haber/434994/diskin-yargilandigi-1-mayis-davasi-goruldu-1-mayis-kutlamak-hakimiz>

¹⁵³ TIHV and İHD, 'Verilerle 2021 Yılında Türkiye'de İnsan Hakları İhlalleri' p. 11, <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2021-yilinda-turkiyede-insan-haklari-ihlalleri/>.

¹⁵⁴ HRW 'Protesting as a Terrorist Offense The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey', (1 November 2010), <https://www.hrw.org/report/2010/11/01/protesting-terrorist-offense/arbitrary-use-terrorism-laws-prosecute-and>;

HRW, (2010, November 1), 'Turkey: Terrorism Laws Used to Jail Kurdish Protesters' (1 November 2010), <https://www.hrw.org/news/2010/11/01/turkey-terrorism-laws-used-jail-kurdish-protesters>;

IHD/HRA, 'Uluslararası Kurum ve Kuruluşları Türkiye'de Yaşanan İfade Özgürlüğü, Barışçıl Protesto, İşkence Yasası İhlallerinin Önlenmesi İçin Acil Eyleme Çağırıyoruz' (23 August 2019), <https://www.ihd.org.tr/uluslararasi-kurum-ve-kuruluslari-turkiyede-yasanan-ifade-ozgurlugu-bariscil-protesto-iskence-yasagi-ihlallerinin-onlenmesi-icin-acil-eyleme-cagiriyoruz/>.

¹⁵⁵ Ibid.

¹⁵⁶ The killing of 34 young activist, who were part of a movement to help the reconstruction of the neighbouring Syrian town of Kobane, by an ISIS bombing attack.

¹⁵⁷ Killing of 34 Kurdish villagers from Roboski by Turkish F-16 fighter jets at the Iraq – Turkey border.

¹⁵⁸ TIHV, 'İfade, Toplanma ve Örgütlenme Özgürlükleri Raporu' (1 January – 30 April 2021), <https://tihv.org.tr/wp-content/uploads/2021/11/1-Ocak-30-Nisan-2021-Do%CC%88rt-Aylik-Rapor.pdf> ; 'İfade, Toplanma ve Örgütlenme Özgürlükleri Raporu' (1 May – 31 June 2021), <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/ifade-toplanma-ve-orgutlenme-ozgurlukleri-raporu-1-mayis-30-agustos-2021/> ; TIHV, 'İfade, Toplanma ve Örgütlenme Özgürlükleri Raporu (1 September – 30 November 2021)', <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/ifade-toplanma-ve-orgutlenme-ozgurlukleri-ihlalleri-raporu-1-eylul-30-kasim-2021/> .

¹⁵⁹ See for example, the reporting on the cancellation of loans and scholarship of university students for having participated peaceful protests, Duvar English, 'Over 100 university students have scholarships canceled for participating in Boğaziçi protests' (24 June 2021), <https://www.duvarenglish.com/over-100-university-students-have-scholarships-canceled-for-participating-in-bogazici-protests-news-57928> .

71. The statistics and the examples cited above demonstrate the authorities' targeting of individuals exercising their right to freedom of assembly, which has systematically involved bringing different criminal charges against them and also fining them under the Misdemeanour Law.¹⁶⁰ The NGOs submit that this practice should be considered as an arbitrary use of criminal law as it has been used by the authorities to intimidate or silence peaceful protestors and it creates a chilling effect on the society as a whole.

4. Conclusion

72. Despite the Government's claims in its latest action plan of 8 July 2022,¹⁶¹ the domestic legislative framework in Türkiye fails profoundly to meet the Convention standards. Thus the application and interpretation of even this problematic framework by the domestic authorities continue to systematically violate the right to freedom of peaceful assembly.

73. The statistics and the examples provided in this submission show that in recent years, the right to freedom of peaceful assembly has been rendered ineffective and illusory, in particular, through the domestic authorities' practice of the imposition of blanket and specific bans without any valid justification, violent police interventions and arbitrary arrests, and criminalisations of peaceful protestors. In addition, perpetrators of police violence, which is used to disperse protests, enjoy almost complete impunity. The root cause of the problem lies, among others, in the lack of an adequate legal framework as it was identified by the ECtHR and the CM in *Ataman group* of cases.

74. Under these circumstances, it is clear that the Turkish Government has not adopted the necessary measures in order adequately to address the Court's and the CM's findings in the present group of cases or to strengthen the right to freedom of assembly in general. On the contrary, the situation regarding the exercise of the right has seriously deteriorated in Türkiye. Although the Turkish Government argues in its latest Action Plan that there are positive developments in the case law of the Court of Cassation and the Constitutional Court, and that these courts' interpretation of domestic law is in line with the principles set out in the case law of the ECtHR, as explained above, the reality of the situation is one of large-scale, systematic violations of the right to peaceful assembly.

75. Considering the essential role of the right to freedom of assembly in safeguarding democracy and pluralism and Türkiye's upcoming presidential elections in 2023, there is an urgent need for the CM to adopt a strong and resolute approach in its supervision of the execution of the judgments of the ECtHR in the *Oya Ataman group*.

V. Recommendations to CM on general measures and how to monitor the supervision of the cases effectively

Procedural matters

The NGOs urge the CM to:

- i. Ensure that the *Oya Ataman group* cases remain under the enhanced procedure and be treated as a leading case under Article 11 of the Convention.
- ii. Review this group of cases regularly in its quarterly Human Rights meetings.

¹⁶⁰ IHD, 'Contribution to the report of Special Rapporteur on the rights to freedom of peaceful assembly and of association during crises situations' (n 24)

¹⁶¹ 1443rd meeting (September 2022) (DH) - Action plan (08/07/2022) - Communication from Türkiye concerning the group of cases *Ataman v. Turkey* (Application No. 74552/01, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)728E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)728E)).

General measures to implement the ECtHR's findings of violations in relation to Article 11 together with Articles 2, 3, 5, 10 and 13 of the Convention

The NGOs urge the CM to:

- iii. Urge Türkiye to revise its Action Plan and address in full the structural problems arising from the domestic legislative framework identified by the ECHR in the *Oya Ataman group*;
- iv. Amend Law No. 2911 to ensure that its provisions are fully in line with the principles set out in the case law of the ECtHR;
- v. Amend Law No. 5442 to ensure that its provisions are fully in line with the principles set out in the case law of the ECtHR; in particular, amend Article 11(C) which grants broad powers to governors to ban both peaceful public assemblies and indoor human rights events,
- vi. Review the 2016 Directive on the use of tear gas and other crowd control weapons to ensure that it complies in all respects with international standards in relation to the use of crowd control weapons and to make use of the international expertise which could be made available through the Council of Europe;
- vii. Urge Türkiye to put in place an effective *ex post facto* review mechanism to assess the reasonableness and proportionality of any use of excessive force by law enforcement officials;
- viii. Call on Türkiye to stop the criminalization of the members of civil society who exercise their right to freedom of peaceful assembly;
- ix. Call on Türkiye to pursue a clear and detailed strategy to prevent violations of the right to freedom of peaceful assembly;
- x. Urge Türkiye to carry out an effective overview the in-service training programmes for law enforcement officials on human rights, proportionate use of force, intervention against public events and use of tear gas;
- xi. Request Türkiye to provide detailed information on administrative bans imposed on assemblies and demonstrations (including information on the locations, the authorities who ordered, dates, their scope and durations), on interventions by law enforcement officers to disperse demonstrations and meetings, and on assemblies and demonstrations that were allowed to take place without police intervention although they failed to comply with the requirements of the Law No. 2911, as well as the number of criminal and administrative prosecutions and convictions linked to breaches of Law No. 2911;
- xii. Request Türkiye to provide detailed information on the criminal investigations and proceedings initiated against law enforcement officers accused of using excessive force to disperse meetings and demonstrations (including information on the numbers of prosecutions, convictions and acquittals, the type of offences and sentences).